MAHMOOD BIN GHANI v. SEOW SIN HWA

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. & Chua J.) February 3, 1967]

[Singapore — Federal Court Civil Appeal No. Y16 of 1966]

Practice and Procedure — Costs — Taxation of — Matter settled before issue of writ — Whether "getting up" fee can be allowed — R.S.C., 1934 O. LXII r. 49(2) and Schedule C items 59 to 79, 81 and 82.

The applicant, respondent in this appeal, took out an originating summons to obtain the court's approval to accept the sum of $4,000 as damages in respect of a claim arising out of an accident involving a motor cycle ridden by the respondent, appellant herein. The court approved the settlement and ordered that the costs of the application as between party and party be taxed and paid by the respondent to the applicant's solicitors. The bill of costs came up for review of taxation before the registrar and the main objection taken by the respondent was that the registrar had allowed a "getting up" fee in a case where there was never to be a trial as the matter had been settled before issue of the writ of summons. It was also submitted for the respondent that Order LXII rule 49(2) applied to this case which was heard by a judge in chambers, and that as no memorandum in writing had been expressly made and signed by the judge no special allowance should be awarded to the applicant's solicitors. The registrar on review came to the conclusion that he had been wrong in allowing any "getting up" fee at all in this case but he however allowed the sum of $150 as a special fee under item 80 of Schedule C. The respondent then appealed to a judge in chambers who agreed with the submission made by counsel for the applicant that Order LXII rule 49(2) did not apply to an application by originating summons but only to interlocutory applications. On appeal to the Federal Court,

Held: an originating summons comes within the four corners of Order LXII rule 49(2) of our Rules of the Supreme Court. While it is true that the wording of our said rule is based on Order 65 rule 27(12) of the English rules our Order LXII rule 49(2) has to be construed in the context of the circumstances prevailing in Singapore where every legal practitioner is an advocate and solicitor. Therefore the fee for the preparation of the matter which was laid before the judge who approved the settlement could not exceed the sum of $100.

FEDERAL COURT.

C. S. Wu for the appellant.

Denis Murphy for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: In this case the applicant, who is an infant, took out an originating summons by her father and next friend to obtain the court's approval to accept a sum of $4,000 as damages in respect of a claim arising out of an accident involving a motor cycle ridden by the respondent and the applicant, who sustained injuries as a result of the accident.

No writ of summons had yet been issued as the offer to pay the sum of $4,000 was made on behalf of the respondent at a fairly early stage of the matter.

At the hearing of the originating summons the settlement was approved and it was ordered, *inter alia*, that the costs of the application as between party and party were to be taxed and paid by the respondent to the applicant's solicitors. The bill of costs came up for taxation in due course and was duly taxed. Subsequently, the respondent submitted objections to the taxation which were heard by the registrar.

The main objection taken by the respondent was that the registrar had allowed a "getting up" fee in a case where there was never to be a trial as the matter had been settled before the issue of any writ of summons. The item in question in the bill of costs is item 28 which reads as follows:—

> "28. Instructions to approve settlement of the applicant's claim perusing police reports, sketch plan, photographs and other documents, considering liability thereon, perusing medical reports and considering the offer to settle, looking up authorities on *quantum of damages* and generally preparing the case for the approval of the judge. $1,000".

Before the registrar it was contended by counsel for the respondent that a "getting up" fee could only be allowed under item 81 or item 82 of Schedule C to the Rules of the Supreme Court, 1934 where the matter is to proceed to trial and as in this case there was never to be a trial, no "getting up" fee should be allowed. It was also submitted by counsel for the respondent that Order LXII rule 49(2) applied to this matter, which was heard by a judge in chambers, and that as no memorandum in writing had been expressly made and signed by the judge no special allowance should be awarded to the applicant's solicitor.

On behalf of the applicant it was argued that item 80 of Schedule C provides that the registrar may on special grounds increase any allowance in respect of item 59 to 79 inclusive of Schedule C and accordingly a special fee for "Instructions for Originating Summons" under item 62 should be allowed. It was also submitted by counsel for the applicant that Order LXII rule 49(2) did not apply to an application made by way of originating summons but only to interlocutory applications.

Upon a review of the taxation, the registrar came to the conclusion that he had been wrong in allowing any "getting up" fee at all and disallowed item 28 of the bill in *toto*. However, he allowed the sum of $150 as a special fee for instructions for originating summons under item 80 of Schedule C.

Thereupon the respondent applied to a judge in chambers for an order to review the taxation. The matter was duly heard and in his judgment the learned judge stated that he agreed with the submission made by counsel for the applicant that Order LXII rule 49(2) did not apply to an application made by way of originating summons but only to interlocutory applications. The

decision of the learned judge on the matter before him is contained in the following passage of his judgment:—

"I see no reason for adopting a narrow or restricted construction of item 81 and I have come to the conclusion that a getting up fee is allowable in the present case under item 81 or item 82 of Schedule C of the Rules of the High Court as the work done was properly and reasonably necessary for the getting up of the case having regard to all the circumstances.

The registrar was clearly of the opinion that a fee should be allowed but having reached the conclusion that he could not allow it under either item 81 or item 82 decided on a compromise to which I have already alluded. In my view there are no special grounds here which would justify the application of item 80. As there has been no cross-appeal as to the amount of $150 allowed by the registrar that figure will stand but as a 'getting up' fee under item 81".

It is against this decision that this appeal is now brought by the respondent.

The first question to be determined is whether Order LXII rule 49(2) applies to applications made by way of originating summons. In considering this question it is important to note that Preliminary Rule 3(d) of the Rules of the Supreme Court, 1934 reads as follows:—

"(d) 'Originating' as applied to any motion, petition, summons or other proceeding means that such proceeding is taken otherwise than in a pending cause or matter."

In my opinion it is clear from the wording of Preliminary Rule 3(d) that an originating summons is a particular type of summons, namely, a summons issued otherwise than in a pending cause or matter. It can be seen therefore that an originating summons comes within the four corners of Order LXII rule 49(2) which provides as follows:—

"(2) Where the preparation of the case or matter for laying it before a judge or registrar in chambers, or on a summons, has required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore appears to the judge or registrar to deserve higher remuneration than the ordinary fees, the judge or registrar may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge or registrar, specifying distinctly the grounds of such allowances, such fee not exceeding one hundred dollars as in his discretion he thinks fit, instead of the above-mentioned fees."

Counsel for the applicant has pointed out that the provisions of Order LXII rule 49(2) are based on the wording of Order 65 rule 27(12) of the Rules of the Supreme Court of England. This particular Order 65 rule 27(12), which was among those Orders and rules which were revoked in 1960, dealt specifically with the remuneration of solicitors practising in England who were concerned with the preparation of cases or matters to be laid before a judge at chambers on a summons. While this is true, it seems to me that Order LXII rule 49(2) has to be construed in the context of the circumstances prevailing in Singapore where every legal practitioner is an advocate and solicitor. In my opinion, the fee for the preparation of the matter which was laid before the judge who approved the settlement could not exceed the sum of $100.

Counsel for the applicant has submitted that by virtue of Preliminary Rule 2 of the Rules of the Supreme Court, 1934, the provisions of Order 80 rule 12 of the Rules of the Supreme Court of England, which deal with the approval of settlements of claims for money made by persons under disability, should be followed and adopted in Singapore. In my view, as there has been in existence for some time in Singapore a procedure whereby settlements of such claims have been approved, this submission must fail.

Several cases were cited during the argument which dealt with the question at which stage of an action a "getting up" fee could properly be allowed. In view of the conclusion which I have reached that the originating summons taken out by the applicant was a summons within the meaning of Order LXII rule 49(2), the decisions in these cases are, in my opinion, not applicable to the facts of the present case.

It follows from the foregoing that the appeal must be allowed. There will be no "getting up" fee under item 81 of Schedule C in this case. A fee of $100 is allowed for the preparation of the case which was laid before the judge who approved the settlement.

It is perhaps desirable that the provisions of Order LXII rule 49(2) be considered by the proper authority with a view to their being amended.

By consent, no order as to costs.

Wee Chong Jin C.J.: I agree.

Chua J.: I agree.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

KHADIJAH v. STERLING DRUG (MALAYA) LTD.

[O.C.J. (Ali J.) February 12, 1967]

[J.B. — Civil Suit No. 163 of 1964]

Practice and Procedure — Costs — Award in action for damages amounting to $4,000 on 100% liability — Apportionment at 50% on a finding of contributory negligence reducing damages by $2,000 — Whether plaintiff entitled to have his costs taxed on High Court scale — R.S.C. 1957, O. 65 r. 12B — Civil Law Ordinance, 1956, s. 12.

This was an appeal on the question of costs. The plaintiff brought an action for damages arising from injuries she sustained in an accident and was awarded, on the basis of full liability, general damages amounting to $4,000, but on a finding of contributory negligence, which the learned trial judge apportioned at 50%, the